

105TH CONGRESS  
1ST SESSION

# H. R. 2792

To amend the Internal Revenue Code of 1986 to provide for the treatment of expenses incurred in asserting any claim of employment discrimination and for damages and back pay received on account of employment discrimination.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1997

Mr. SOLOMON introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the treatment of expenses incurred in asserting any claim of employment discrimination and for damages and back pay received on account of employment discrimination.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Employment Discrimi-  
5       nation Award Tax Relief Act”.

1 **SEC. 2. DEDUCTION OF EXPENSES PAID OR INCURRED IN**  
2 **CONNECTION WITH ASSERTING OR PROS-**  
3 **ECUTING A CLAIM FOR AGE, GENDER, RACE,**  
4 **OR OTHER FORM OF PROHIBITED EMPLOY-**  
5 **MENT DISCRIMINATION OR FOR RELATED**  
6 **CLAIMS.**

7 (a) IN GENERAL.—Paragraph (2) of section 62(a) of  
8 the Internal Revenue Code of 1986 (relating to the defini-  
9 tion of adjusted gross income) is amended by adding after  
10 subparagraph (C) the following new subparagraph:

11 “(D) EXPENSES OF EMPLOYEES IN BRING-  
12 ING OR PROSECUTING EMPLOYMENT DISCRIMI-  
13 NATION CLAIMS OR RELATED CLAIMS.—The de-  
14 ductions allowed by part VI (section 161 and  
15 following) which consist of expenses paid or in-  
16 curred by the taxpayer in connection with the  
17 assertion or the prosecution by or on behalf of  
18 the taxpayer as an employee or a former em-  
19 ployee, against the taxpayer’s employer or  
20 former employer, of any claim—

21 “(i) for age, gender, race, or other  
22 form of employment discrimination prohib-  
23 ited by Federal, State, or local law, or

24 “(ii) for emotional distress or other  
25 injury relating to such claimed employment  
26 discrimination.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to expenses paid or incurred in  
 3 taxable years beginning after December 31, 1985.

4 **SEC. 3. TREATMENT FOR ALTERNATIVE MINIMUM TAX PUR-**  
 5 **POSES OF EXPENSES PAID OR INCURRED IN**  
 6 **CONNECTION WITH ASSERTING OR PROS-**  
 7 **ECUTING A CLAIM FOR AGE, GENDER, RACE,**  
 8 **OR OTHER FORM OF PROHIBITED EMPLOY-**  
 9 **MENT DISCRIMINATION OR FOR RELATED**  
 10 **CLAIMS.**

11 (a) IN GENERAL.—Clause (i) of section 56(b)(1)(A)  
 12 of the Internal Revenue Code of 1986 (relating to adjust-  
 13 ments in computing alternative minimum taxable income  
 14 and as applicable to individuals) is amended by inserting  
 15 before the comma “other than the deductions allowed by  
 16 part VI (section 161 and following) which consist of ex-  
 17 penses paid or incurred by the taxpayer in connection with  
 18 the assertion or the prosecution by or on behalf of the  
 19 taxpayer, as an employee or a former employee, against  
 20 the taxpayer’s employer or former employer, of any  
 21 claim—

22 “(I) for age, gender, race, or  
 23 other form of employment discrimina-  
 24 tion prohibited by Federal, State, or  
 25 local law, or

1 “(II) for emotional distress or  
2 other injury relating to such claimed  
3 employment discrimination.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to expenses paid or incurred in  
6 taxable years beginning after December 31, 1985.

7 **SEC. 4. EXCLUSION FROM GROSS INCOME FOR DAMAGES**  
8 **RECEIVED ON ACCOUNT OF AGE, GENDER,**  
9 **RACE, AND OTHER FORMS OF PROHIBITED**  
10 **EMPLOYMENT DISCRIMINATION.**

11 (a) IN GENERAL.—Section 104(a) of the Internal  
12 Revenue Code of 1986 (relating to compensation for inju-  
13 ries or sickness) is amended by striking “and” at the end  
14 of paragraph (4), by striking the period at the end of para-  
15 graph (5) and inserting “; and”, and adding after para-  
16 graph (5) the following new paragraph:

17 “(6) amounts received (whether by suit or  
18 agreement and whether as lump sums or as periodic  
19 payments) on account of any claim—

20 “(A) for age, gender, race, or other form  
21 of employment discrimination prohibited by  
22 Federal, State, or local law (other than  
23 amounts representing backpay), or

1           “(B) for emotional distress or other injury  
 2           relating to such claimed employment discrimi-  
 3           nation.”.

4           (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to amounts received in taxable  
 6 years beginning after December 31, 1985.

7 **SEC. 5. LIMITATION ON TAX BASED ON INCOME AVERAG-**  
 8 **ING FOR BACKPAY RECEIVED ON ACCOUNT**  
 9 **OF AGE, GENDER, RACE, AND OTHER FORMS**  
 10 **OF PROHIBITED EMPLOYMENT DISCRIMINA-**  
 11 **TION.**

12           (a) IN GENERAL.—Subchapter Q of chapter 1 of the  
 13 Internal Revenue Code of 1986 (relating to readjustment  
 14 of tax between years and special limitations) is amended  
 15 by inserting after the table of parts the following new part:  
 16 **“PART I—AVERAGING OF INCOME FROM BACK-**  
 17 **PAY AWARDS RECEIVED ON ACCOUNT OF**  
 18 **EMPLOYMENT DISCRIMINATION**

“Sec. 1301. Income from backpay received on account of age,  
 gender, race, and other forms of prohibited employ-  
 ment discrimination.

1 **“SEC. 1301. INCOME FROM BACKPAY RECEIVED ON AC-**  
2 **COUNT OF AGE, GENDER, RACE, AND OTHER**  
3 **FORMS OF PROHIBITED EMPLOYMENT DIS-**  
4 **CRIMINATION.**

5 “(a) GENERAL RULE.—If employment discrimination  
6 backpay is received by a taxpayer during a taxable year,  
7 the tax imposed by this chapter for such taxable year shall  
8 not exceed the sum of—

9 “(1) the tax which would be so imposed if—

10 “(A) no amount of such backpay were in-  
11 cluded in gross income for such year, and

12 “(B) no deduction were allowed for such  
13 year for expenses (otherwise allowable as a de-  
14 duction to the taxpayer for such year) in con-  
15 nection with making or prosecuting any claim  
16 for age, gender, race, or other form of employ-  
17 ment discrimination by or on behalf of the tax-  
18 payer, plus

19 “(2) the product of—

20 “(A) the number of years in the backpay  
21 period, and

22 “(B) the amount by which the tax deter-  
23 mined under paragraph (1) would increase if  
24 the amount on which such tax is determined  
25 were increased by the average annual net back-  
26 pay amount.

1 “(b) DEFINITIONS.—For purposes of this section—

2 “(1) EMPLOYMENT DISCRIMINATION BACK-  
3 PAY.—The term ‘employment discrimination back-  
4 pay’ means backpay on account of any claim for age,  
5 gender, race, or other form of employment discrimi-  
6 nation prohibited by Federal, State, or local law  
7 made by or on behalf of the taxpayer.

8 “(2) BACKPAY.—The term ‘backpay’ means  
9 amounts includible in gross income—

10 “(A) which are wages, salaries, retirement  
11 pay, or other similar compensation,

12 “(B) which are received during the taxable  
13 year by the taxpayer for services performed as  
14 an employee or former employee before such  
15 taxable year for the taxpayer’s employer or  
16 former employer, and

17 “(C) which are ordered, recommended, or  
18 approved by any Federal or State agency or  
19 which are amounts received from an award in,  
20 or the settlement of, a lawsuit or threatened  
21 lawsuit (in either case, regardless of whether as  
22 lump sums or as periodic payments).

23 “(3) BACKPAY PERIOD.—The term ‘backpay pe-  
24 riod’ means the period during which the services are  
25 performed to which the employment discrimination

1       backpay is attributable. If such period is not equal  
 2       to a whole number of taxable years, such period  
 3       shall be increased to next highest number of whole  
 4       taxable years.

5               “(4) AVERAGE ANNUAL NET BACKPAY  
 6       AMOUNT.—The term ‘average annual net backpay  
 7       amount’ means the amount equal to—

8                       “(A) the excess of—

9                               “(i) the amount not includible in  
 10                               gross income by reason of subsection  
 11                               (a)(1)(A), over

12                               “(ii) the amount not allowable as a  
 13                               deduction by reason of subsection  
 14                               (a)(1)(B), divided by

15                       “(B) the number of years in the backpay  
 16       period.”

17       (b) CLERICAL AMENDMENT.—The table of parts for  
 18       subchapter Q of chapter 1 of such Code is amended by  
 19       inserting the following new item before the item relating  
 20       to part V:

“Part I. Averaging of income from backpay awards received on  
 account of employment discrimination.”

21       (c) EFFECTIVE DATE.—The amendments made by  
 22       this section shall apply to amounts received in taxable  
 23       years beginning after December 31, 1985.



1 **SEC. 6. WAIVER OF STATUTE OF LIMITATIONS.**

2       If refund or credit of any overpayment of tax result-  
3 ing from any amendment made by this Act is prevented  
4 at any time before the close of the 1-year period beginning  
5 on the date of the enactment of this Act by the operation  
6 of any law or rule of law (including res judicata), refund  
7 or credit of such overpayment (to the extent attributable  
8 to such amendment) may, nevertheless, be made or al-  
9 lowed if claim therefor is filed before the close of such  
10 1-year period.

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